

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0460
Sales and Use Tax
For the Tax Period 2000-2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

1. Sales and Use Tax- Manufacturing Exemptions

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-3-2 (a), IC 6-2.5-5-3(b), *Gross Income Tax Division v. National Bank and Trust Co.*, 79 N.E. 2d 651 (Ind. 1948).

The taxpayer contends that certain items of tangible personal property qualify for a manufacturing exemption from the sales and use tax.

2. Tax Administration-Imposition of Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2(b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer is a corporation that manufactures component parts for the automotive industry. After an audit for the tax period 2000-2002, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional use tax, interest, and penalty. During the review process, the department and the taxpayer came to agreement that the four tool stands purchased on January 16, 2000 and listed on page 23 of the audit assessment and the four and five inch swivel casters purchased on December 1 and December 14, 2000 and listed on page 21 of the audit assessment were exempt from sales and use tax. The taxpayer continued in its protest of the assessment of use tax on several other items and the penalty. A hearing was held and this Letter of Findings results.

1. Sales and Use Tax-Manufacturing Exemptions

DISCUSSION

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

Indiana imposes an excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC 6-2.5-3-2 (a). There are a number of exemptions from the use tax pursuant to the statute. All exemptions must be strictly construed against the party claiming the exemption. *Gross Income Tax Division v. National Bank and Trust Co.*, 79 N.E. 2d 651 (Ind. 1948).

The taxpayer protested the assessments of use tax assessed on replacement parts for a forklift, proximity lasers, small part racks, grating, tool balancers, lift tables, crates, and traceability systems. The taxpayer argued that the protested items qualify for exemption pursuant to the following provisions of IC 6-2.5-5-3 (b):

Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining; or finishing of other tangible personal property.

The arguments and documentation submitted by the taxpayer were insufficient to establish that the protested items were actually directly used in the direct production of the taxpayer's products. Therefore, the taxpayer did not sustain its burden of proving that the department's assessment was incorrect.

FINDING

The taxpayer's protest is denied.

2. Tax Administration-Imposition of Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is

treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

During the tax period, the taxpayer purchased without paying the sales or use tax on many clearly taxable items such catering services, office supplies, and tee shirts. These breaches of the taxpayer's duty constitute negligence.

FINDING

The taxpayer's protest is denied.

KMA/JMM/JMS/05/12/05